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**In the Supreme Court**  
OF THE  
**United States**

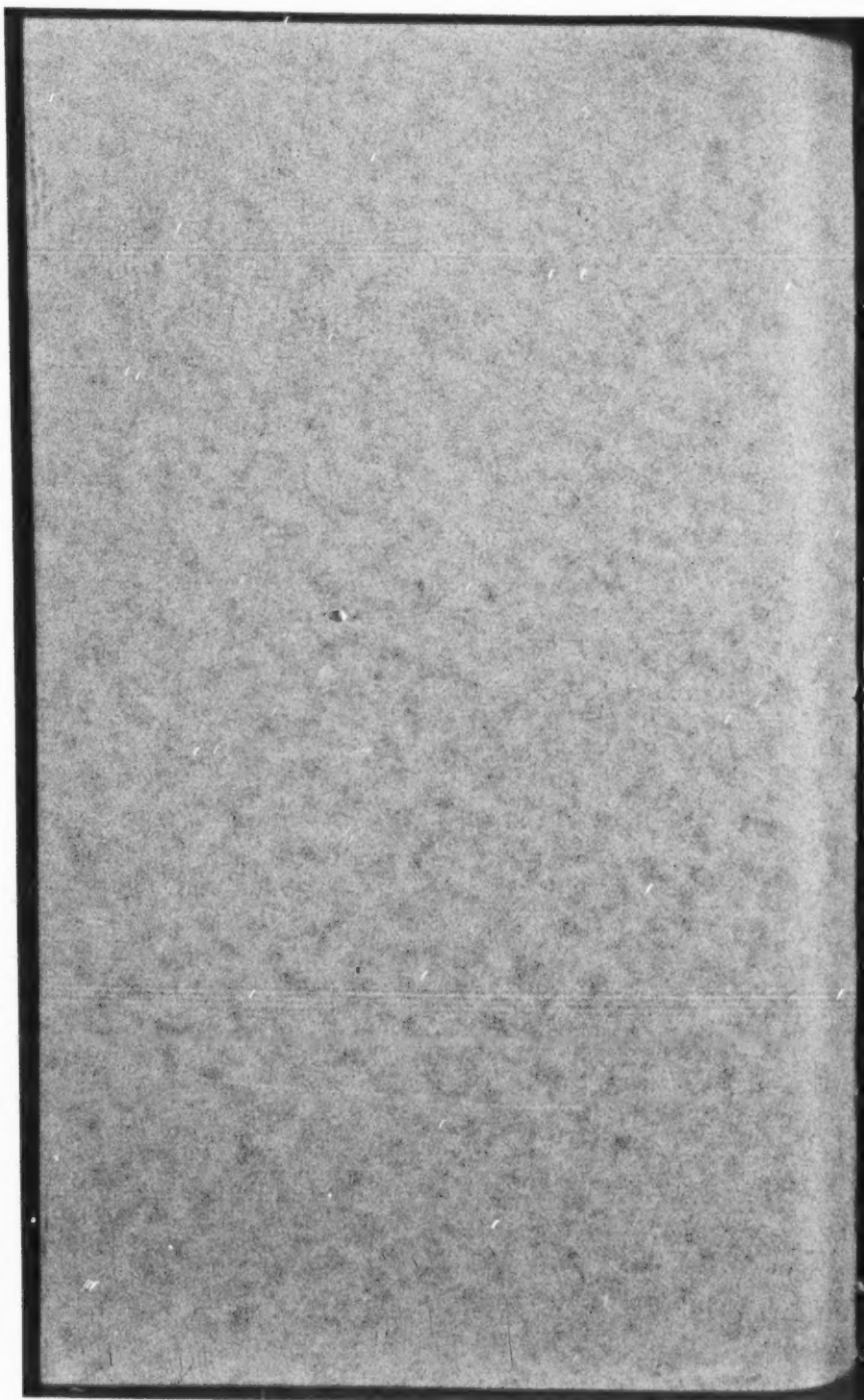
OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,	}
<i>Petitioners,</i>	
VS.	
LUCKENBACH STEAMSHIP COMPANY,	}
<i>Respondent.</i>	

**BRIEF FOR PETITIONERS.**

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### I.

#### STATEMENT OF FACTS.

This case comes before the Court on a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, granted by this Court January 12, 1925.

The case involves the construction of parts of Section 2 of the Act of Congress, dated March 5th, 1915, 38 Stat. at Large, pp. 1164-1185, entitled: 

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"An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a

penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; *and to promote safety at sea.*"

The parts of said Section 2 involved herein reading as follows:

*with*  
*7*  
*tech*  
"That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigation rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and watertenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel.

\* \* \* \* \*

Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts."

Petitioners were quartermasters (seamen) on a vessel called the "Lewis Luckenbach", which was a merchant vessel of 14,400 tons dead weight, 527½ feet long, and 68.2 feet beam (Tr. p. 42), and signed on her at New York on the 30th day of September, 1922, for a voyage to Pacific Coast ports of the United States, and return to some port on the Atlantic Coast North of Cape Hatteras for final discharge.

There were 10 sailors and 3 quartermasters and the 10 sailors were divided up as follows:

Three stood watch with the quartermasters, four hours on and eight hours off, and the other 7 sailors worked from eight in the morning to five o'clock in the evening, then went off duty, to bed undoubtedly,

when bed time came. At night time there would be on watch one quartermaster at the wheel, who would stay there for two hours, then the lookout would relieve him for a half hour, during which time there would be no lookout. That would happen from 10:00 to 10:30 P. M. each night, and from 2:00 to 2:30 each morning from 24 hours after the vessel left New York, to the time she arrived in San Pedro, California; the rest of the men on the ship, excepting one officer on the bridge being asleep during those times (Tr. pp. 21-26).

There is no dispute on the above facts, and upon the arrival of the vessel in San Francisco, libelants demanded their discharges, giving more than one reason, but the operation of the vessel in violation of law in the above particulars among the reasons. Their discharge was refused them. They left, were declared deserters, and this action is brought for the wages earned, and two days pay for the refusal to pay them.

The United States District Court decided that Section 2 above quoted was passed to prevent overwork, and

✓ “not to prescribe the number of seamen on each watch” ✓

and dismissed the libel (Tr. p. 45).

Upon appeal the learned United States Circuit Court of Appeals for the Ninth Circuit affirmed the judgment, saying, among other things:

“The purpose of Congress was obviously to provide for the safety of the ship in the selection of qualified quartermasters, and men for the lookout,

and also to prevent overwork. The division of the men into watches as disclosed by the evidence in this case was not contrary to the statute."

The master of the vessel testified (Tr. p. 40):

"Q. From 5 o'clock at night until the morning, all there would be on deck on actual duty would be an officer, a quartermaster and one sailor?"

A. Yes; on that trip."

It also appears that the officer would be on the bridge, which is located amidship, of the length of the ship, so when the quartermaster was below, and the lookout in the wheel house, there was no one forward of the bridge, and in case of disaster no one to get boats out or call those asleep, and no person on a ship of 14,400 tons and 527½ feet long to observe the approach of other vessels or nearness to shore. The officer is not supposed to do that exclusively, he has other duties to attend to. A lookout is a person stationed at the place he can most likely observe objects ahead, and who has nothing else to do but to watch for such things.

Some claim is made herein about sailors deserting vessels upon their arrival on the Pacific Coast, but it appears (Tr. p. 40) that the crew never went short-handed; they were always able to fill up.

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## II.

### ASSIGNMENT OF ERRORS.

Transcript pages 47-48:

1. The Court erred in finding and deciding that the primary object of Section 2, of the Act of Con-

gress of date March 4th, 1914, commonly known as the Seamen's Bill, or La Follette Act, was to fix the hours of service of seamen.

(By inadvertence the date of the act in question is above given as March 4th, 1914. It should be March 5th, 1915.)

2. The Court erred in finding and deciding that the primary object of said Section 2 of said act was to prevent overwork.

3. The Court erred in finding and deciding that the primary purpose of said Section 2 of said act was not to prescribe the number of seamen that should be on each watch on a vessel.

4. The Court erred in concerning itself as to whether any seamen employed on vessel would have little or nothing to do at night or at any other time.

5. The Court erred in not finding and deciding that the following language in said Section 2 of said act, "The sailors shall, while at sea, be divided into at least two, and the firemen, oilers, and watertenders into at least three watches," compels such of sailors on a vessel to be divided into equal parts as near as they can be divided.

6. The Court erred in not finding and deciding that the intention of Congress in passing said Section 2 of said act was to always have enough men on the deck of a vessel to make necessary provisions for safety in the event of a disaster.

7. The Court erred in not finding and deciding that the requirement of dividing sailors into at least

two watches on a vessel is a safety requirement and for the protection of life at sea.

8. The Court erred in not finding and deciding that the language, divided into at least two watches, compelled the dividing of the sailors on the "Lewis Luckenbach" into two or more equal parts.

9. The Court erred in finding that the libelants were not entitled to their discharge from the "Lewis Luckenbach" at the times mentioned in the amended libel herein, and in not finding and deciding that each was entitled to his discharge.

10. The Court erred in not ordering judgment for each of the libelants as prayed for in the amended libel herein.

11. The Court erred in dismissing libelants' libel herein, and dismissing said libel as to each of the libelants.

12. The Court erred in not finding and deciding that, according to the general understanding of the English language, the meaning of the language divided in two or more watches, means an equal division as near as may be.

13. The Court erred in not finding and deciding that the term divide means an equal division as near as may be.

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### III.

#### **ARGUMENT.**

A thrill of horror went around the world when the "Titanic" was lost with the attendant enormous loss



of life. The "Volturnia" was lost at about the same time, with another enormous loss of life. As to the "Titanic" not a single life should have been lost if she had had proper boat equipment and crews to man them. Very shortly thereafter an international conference was called in London to devise means of saving life at sea, some, but not a great deal of good came out of the conference. Congress was then considering what is called the "Seamen's Act", and at the time above mentioned it was passed, but the act is not merely a "Seamen's Act". The last part of its title reads:

*"and to promote safety at sea".*

The act contains 22½ pages, not 5 of which are taken up with seamen's matters, and where taken up in the first pages, a considerable portion thereof is devoted to matters relating to safety at sea. Section 2 was amended for no other reason than to see that boats could be speedily manned in case of disaster, as we will hereafter show.

Section 6 relates entirely to health.

Sections 7 and 8 relate entirely to discipline, and about 7 pages of the act are entirely taken up with lifeboats, liferafts, lifebuoys, davits on which to swing boats, and other matters, showing that Congress had in mind the endeavor to try and stop the loss of another 1500 and odd lives in one catastrophe by the sole failure to have sufficient boats and life saving rafts on board. That part of the act is headed:

“REGULATIONS.  
LIFE-SAVING APPLIANCES,  
Standard Types of Boats”.

We then find a complete system for the fitting out of a ship in those regards.

Then, of course, having the boats, competent men to handle them were required. Congress provided for competent men in Section 13 of the act.

In Section 14 it provided for life boat drills, etc.

On pages 1181 to 1182 it provided for certified life-boat men, officers to command boats, musters, etc., so as to make up a complete system of saving life at sea, and then considered the question as how to make the apparatus required available, in the event that a catastrophe happened at night—the time they usually happen—and the the above Section 2 was the result.

Of course all the apparatus, drills, certified men and musters in the world would profit nothing, if by reason of the lack of a few minutes time they could not be used, or effectually put in operation. That Congress had the manning of the boats at night in mind, is clearly shown by the following part of the proceedings before Congress when the bill was being considered; the same sentiment further appearing in the remarks of other members of Congress.

The purpose of the act runs all the way through the proceedings in Congress, and we quote the following from such proceedings, it being an extract from pages 18 and 19 of the “Extension of Remarks of Hon. John E. Raker” in the House of Representatives, but

the same matters run all the way through the proceedings before both houses.

“Hon. William B. L. Wilson, M. C. of Pennsylvania has introduced a bill (H. R. 11372). His bill will, when enacted, do more to promote the safety of life and property at sea than has ever been done in all the history of this country. It provides: Watch and watch at sea, dividing the crews on deck into two watches and the engine room crew into three watches, to be on duty alternately while the ship is at sea; \* \* \*

In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessel and boats, there is nothing more important than watch and watch. Watch and watch, in the language of seamen, means that the crews are divided into two equal parts, speaking of the deck crew and into three equal parts speaking of the engine room crew. The watches are, on deck or in the engine room, on duty alternately. They steer, keep lookout, keep the lead going and do such other things as are needed for the safety of the vessel. They keep everything clean and in order. The main point, however, is that they are there to keep things safe. The Arab is said to have a maxim that, ‘Nobody meets a friend in the desert’; it is equally true ‘No vessel meets a friend on the ocean’. There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they may mean collision. \* \* \*

There is growing up a system, mostly in steamers, sometimes called Kalashi watches. This means that certain men are kept on the regular watch and watch, while the other members of the crew are what is called ‘day men’; the ‘day men’ work all day and are supposed to sleep all night. Of course, if anything happens, they are called out, and this is seldom considered on the next day, when they are kept at their work as if nothing had happened the night before.

This, of course, is hard on the men, but in itself has very little to do with safety, except as explained later. Some vessels have brought it down to having only two men to steer and two to keep lookout. Others have four to steer and two take lookout. This gives four or two hours at the wheel and four hours on the lookout. The British Commission laid it down as a demonstrated proposition that no man can give the attention necessary to proper steering for more than two hours at a time. For the same reason no man is in a fit condition to keep lookout for more than two hours without rest. \* \* \*

Vessels are kept close in to save coal and be more comfortable, and that is right; but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision and life and property are lost. At such times the Kalashi watch shows what it really is one man at the wheel and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this time than hours later. The men come on deck; they are sluggish with sleep; they come from the light in the fore-castle out into a different light or darkness on deck. It takes sometime to come out; it takes more time to get accustomed to the different light or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so probably are a number of lives; if one-half of the crew were on deck at the time, they would go ahead and do what is needed, and when the watch below comes up they are led by men on deck. The work goes promptly forward, and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side if such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confident. There is order, action, confidence, and therefore a much improved chance

of getting out of the most desperate scrape. With but the lookout, the helmsman, and the officer on deck when the trouble begins, there is a scurry to get the men out. The master is shouting orders that are not obeyed; because there is nobody to obey them, the men come on deck stupid from sleep and a change of light. Some time passes before the proper work begins to move; there is excitement which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

It is plain that Congress intended to abolish Kalashi watches, and it is plain the master of the "Lewis Luckenbach" still retained them, and it is very plain, this vessel was operated in violation of law, and the libelants had a right to leave.

Congress made an extended and painstaking investigation, then determined that certain requirements were necessary to prevent further unnecessary loss of life at sea. We cannot conceive of any more important investigation it ever made, then in its wisdom it established the rules we have mentioned, and Section 2, which was adopted for the plain and only purpose of always having sufficient men on deck so that in case of disaster enough men would be there to get boats and liferafts out, and do other work that might lead to the safety of the lives of those on board, who in the nature of things would otherwise be asleep. The purpose of Congress was unquestionably a laudable one, and in the law it said that if the law was not followed any seaman could leave the vessel. It is admitted it was not followed in this instance, so petitioners had a statutory right to leave, hence were not deserters, and were entitled to judgment, and in addition to that the lives of every person on the "Lewis

Luckenbach" were jeopardized by the failure to observe the laws, which laws were evidently treated as of no consequence by the master of the vessel.

There seems no question but what the construction given by the learned United States District Court and the United States Circuit Court of Appeals was erroneous herein. The law is very plain. It says, so far as applicable here,

"the sailors shall, while at sea, be divided into at least two, \* \* \* watches, \* \* \* which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. \* \* \*"

Of course, seven of the sailors in this case were not divided into watches at all, nor were they on duty "successively," to any watch or person; they went on watch at eight in the morning, stayed until five o'clock in the evening. No similar or any body of men either preceded or followed them, so the being "on duty successively" was also entirely absent in this case, and the very thing that Congress determined should be done—have men on deck to man boats, etc., in case of and to prevent disaster—was not done at all, and the policy it established for the United States in promoting safety at sea was entirely ignored.

The word "divide" has a well defined meaning, as follows:

*Graves v. White*, 127 Am. St. Rep. 106.

Syllabus:

"By common usage the common acceptance and definition of the word 'divide' unqualified by other words when used between two contracting parties, binds the severance or partition in two equal parts."

The parties in this case were contracting parties.

If the language had been "shall be divided into at least two parts" instead of "into at least two watches" it would have meant exactly the same, and no one would then contend that 3 and 7 was a proper division.

Webster's Imperial Dictionary gives the following definition of the word "divide":

"9. In mathematics (a) to cause to undergo the operation of division, (b) to be contained in an equal number of times; as ten divides thirty."

"11. To make into equal or regular parts; to graduate; as, to divide a micrometer."

We respectfully submit that the decisions of both the lower courts herein were erroneous, not only in their construction of the word divide, but also in their determination of the intent of Congress; that the true intent of Congress when it adopted the act in question, was to establish how merchant vessels should be operated with the least risk to those who went to sea on them; that its plain intent is apparent, and its policy was to endeavor to lessen the risks of sea travel, and that the said decisions herein are in effect that such intent and policy need not be complied with.

It seems needless for us to mention the importance of this case and we respectfully ask that the decisions of the lower courts herein be reversed.

Dated, San Francisco,  
August 12, 1925.

Respectfully submitted,  
H. W. HUTTON,  
*Attorney for Petitioners.*